

LATHAM & WATKINS LLP  
Miles N. Ruthberg (Bar No. 086742)  
miles.ruthberg@lw.com  
Pamela S. Palmer (Bar No. 107590)  
pamela.palmer@lw.com  
633 West Fifth Street, Suite 4000  
Los Angeles, California 90071-2007  
Telephone: +1.213.485.1234  
Facsimile: +1.213.891.8763

LATHAM & WATKINS LLP  
Kimberly Arouh Hicks (Bar No. 163285)  
kimberly.hicks@lw.com  
Jake Ryan (Bar No. 211899)  
jake.ryan@lw.com  
Curtis Carll (Bar No. 248470)  
curtis.carll@lw.com  
Daniel K. Greene (Bar No. 253595)  
daniel.greene@lw.com  
600 West Broadway, Suite 1800  
San Diego, California 92101-3375  
Telephone: +1.619.236.1234  
Facsimile: +1.619.696.7419

Attorneys for Nominal Defendant  
Leap Wireless International, Inc.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CHARLES GRAHAM, Derivatively on Behalf  
of Nominal Defendant LEAP WIRELESS  
INTERNATIONAL, INC.,

Plaintiff,

v.

S. DOUGLAS HUTCHESON, AMIN  
KHALIFA, GRANT BURTON, DEAN M.  
LUVISA, MICHAEL B. TARGOFF, JOHN D.  
HARKEY, JR., ROBERT V. LAPENTA,  
MARK H. RACHESKY, M.D., and JAMES  
D. DONDERO,

Defendants,

and

LEAP WIRELESS INTERNATIONAL, INC.,

Nominal Defendant.

CASE NO. 08-CV-0246 L NLS

(Derivative Action)

**DECLARATION OF KIMBERLY A.  
HICKS IN SUPPORT OF NOMINAL  
DEFENDANT LEAP WIRELESS  
INTERNATIONAL, INC.'S MOTION  
TO DISMISS DERIVATIVE  
COMPLAINT**

Judge: The Hon. M. James Lorenz  
Courtroom: 14  
Hearing Date: August 4, 2008  
Hearing Time: 10:30 a.m.

1 I, Kimberly A. Hicks, declare and state as follows:

2 1. I am an attorney at Latham & Watkins LLP, counsel for nominal  
3 defendant Leap Wireless International, Inc. ("Leap"). I have personal knowledge of the facts  
4 set forth herein and could and would testify competently thereto if called upon to do so.

5 2. Attached to the Request for Judicial Notice in Support of Nominal  
6 Defendant Leap's Motion to Dismiss Derivative Complaint ("the Request") as Exhibit "A" is a  
7 true and correct copy of Leap's Amended and Restated Certificate of Incorporation, dated  
8 August 16, 2004, which is on file and publicly available with the Office of the Secretary of the  
9 State of Delaware.

10 3. Attached to the Request as Exhibit "B" is a true and correct copy of  
11 Exhibit 99.1 (Leap Press Release dated November 9, 2007) attached to Leap's Form 8-K, filed  
12 with the Securities and Exchange Commission ("SEC") on November 13, 2007.

13 4. Attached to the Request as Exhibit "C" is a true and correct copy of  
14 pertinent excerpts from the Statement of Financial Accounting Standards ("SFAS"), No. 154,  
15 Accounting Changes and Error Corrections, published in 2008 by the Financial Accounting  
16 Standards Board.

17 5. Attached to the Request as Exhibit "D" is a true and correct copy of  
18 pertinent excerpts from Leap's Form 10-K/A for the fiscal year ended December 31, 2006, filed  
19 with the SEC on December 26, 2007.

20 6. Attached to the Request as Exhibit "E" is a true and correct copy of  
21 pertinent excerpts from Leap's Form 10-Q/A for the period ending June 30, 2007, filed with the  
22 SEC on December 26, 2007.

23 7. Attached to the Request as Exhibits "F", "G" and "H" are true and correct  
24 copies of Form 4s on file with the SEC, reporting Stewart D. Hutcheson's trading in Leap

25 ///

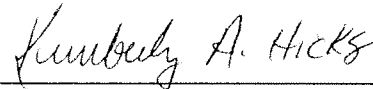
26 ///

27 ///

28 ///

1 securities on February 27, 2007 and May 23, 2007, and Michael B. Targoff's trading in Leap  
2 securities on June 6, 2007.

3 I declare under penalty of perjury of the laws of the United States that the  
4 foregoing is true and correct. Executed this 30 day of May, 2008 in San Diego, California.

5  
6 

7 Kimberly A. Hicks  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28